

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Governmental Affairs and Interstate Cooperation, to which was referred House Bill No. 1265, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 2, line 10, delete "rule, other" and insert "**rule; and**".
- 2 Page 2, delete lines 11 through 12.
- 3 Page 2, line 22, delete "and" and insert "**and**".
- 4 Page 2, after line 35, begin a new paragraph and insert:
- 5 "SECTION 2. IC 4-22-2-28.1 IS ADDED TO THE INDIANA
- 6 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 7 [EFFECTIVE JULY 1, 2005]: **Sec. 28.1. (a) This section applies to a**
- 8 **rule for which the notice required by section 23 of this chapter is**
- 9 **published by an agency after June 30, 2005.**
- 10 **(b) As used in this section, "coordinator" refers to the small**
- 11 **business regulatory coordinator assigned to a rule by an agency**
- 12 **under subsection (e).**
- 13 **(c) As used in this section, "director" refers to the director or**
- 14 **other administrative head of an agency.**
- 15 **(d) As used in this section, "small business" means any person,**
- 16 **firm, corporation, limited liability company, partnership, or**
- 17 **association that:**
- 18 **(1) is actively engaged in business in Indiana and maintains its**
- 19 **principal place of business in Indiana;**
- 20 **(2) is independently owned and operated;**
- 21 **(3) employs not more than one hundred (100) full-time**

employees; and

(4) has gross annual receipts of not more than five million dollars (\$5,000,000).

(e) For each:

(1) rulemaking action; and

(2) rule finally adopted as a result of a rulemaking action;

by an agency under this chapter, the agency shall assign one (1) staff person to serve as the agency's small business regulatory coordinator with respect to the proposed or adopted rule. The agency shall assign a staff person to a rule under this subsection based on the person's knowledge of, or experience with, the subject matter of the rule. A staff person may serve as the coordinator for more than one (1) rule proposed or adopted by the agency if the person is qualified by knowledge or experience with respect to each rule. Subject to subsection (f), in the case of a proposed rule, the agency's notice of intent to adopt the rule under section 23 of this chapter must include the name, address, telephone number, and electronic mail address of the small business coordinator for the proposed rule. Subject to subsection (f), in the case of a rule finally adopted by the agency, the final rule, as published in the Indiana Register and the Indiana Administrative Code, must include the name, address, telephone number, and electronic mail address of the coordinator.

(f) This subsection applies to a rule adopted by the department of environmental management or any of the boards (as defined in IC 13-11-2-18) under IC 13-14-9. In addition to the information required under subsection (e), the department or the board shall include in the notice provided under section 23 of this chapter and in the publication of the final rule in the Indiana Register and the Indiana Administrative Code:

(1) a statement of the resources available to regulated entities through the technical and compliance assistance program established under IC 13-28-3;

(2) the name, address, telephone number, and electronic mail address of the ombudsman designated under IC 13-28-3-2; and

(3) if applicable, a statement of:

(A) the resources available to small businesses through the small business stationary source technical assistance program established under IC 13-28-5; and

(B) the name, address, telephone number, and electronic mail address of the ombudsman for small business

1 **designated under IC 13-28-5-2(3).**

2 **The coordinator assigned to the rule under subsection (e) shall**
3 **work with the ombudsman described in subdivision (2) and the**
4 **office of voluntary compliance established by IC 13-28-1-1 to**
5 **coordinate the provision of services required under subsection (g)**
6 **and IC 13-28-3. If applicable, the coordinator assigned to the rule**
7 **under subsection (e) shall work with the ombudsman referred to in**
8 **subdivision (3)(B) to coordinate the provision of services required**
9 **under subsection (g) and IC 13-28-5.**

10 **(g) The coordinator assigned to a rule under subsection (e) shall**
11 **serve as a liaison between the agency and any small business**
12 **subject to regulation under the rule. The coordinator shall provide**
13 **guidance to small businesses affected by the rule on the following:**

14 **(1) Any requirements imposed by the rule, including any**
15 **reporting, record keeping, or accounting requirements.**

16 **(2) How the agency determines or measures compliance with**
17 **the rule, including any deadlines for action by regulated**
18 **entities.**

19 **(3) Any penalties, sanctions, or fines imposed for**
20 **noncompliance with the rule.**

21 **(4) Any other concerns of small businesses with respect to the**
22 **rule, including the agency's application or enforcement of the**
23 **rule in particular situations. However, in the case of a rule**
24 **adopted under IC 13-14-9, the coordinator assigned to the rule**
25 **may refer a small business with concerns about the**
26 **application or enforcement of the rule in a particular situation**
27 **to the ombudsman designated under IC 13-28-3-2 or, if**
28 **applicable, under IC 13-28-5-2(3).**

29 **(h) The coordinator assigned to a rule under subsection (e) shall**
30 **provide guidance under this section in response to questions and**
31 **concerns expressed by small businesses affected by the rule. The**
32 **coordinator may also issue general guidelines or informational**
33 **pamphlets to assist small businesses in complying with the rule.**
34 **Any guidelines or informational pamphlets issued under this**
35 **subsection shall be made available:**

36 **(1) for public inspection and copying at the offices of the**
37 **agency under IC 5-14-3; and**

38 **(2) electronically through electronic gateway access.**

39 **(i) The coordinator assigned to a rule under subsection (e) shall**
40 **keep a record of all comments, questions, and complaints received**
41 **from small businesses with respect to the rule. The coordinator**
42 **shall deliver the record, along with any accompanying documents**

submitted by small businesses, to the director:

(1) not later than ten (10) days after the date on which the rule is file stamped by the secretary of state under section 35 of this chapter; and

(2) before July 15 of each year during which the rule remains in effect.

The coordinator and the director shall keep confidential any information concerning a small business to the extent that the information is exempt from public disclosure under IC 5-14-3-4.

(j) Not later than November 1 of each year, the director shall:

(1) compile the records received from all of the agency's coordinators under subsection (i);

(2) prepare a report that sets forth:

(A) the number of comments, complaints, and questions received by the agency from small businesses during the most recent state fiscal year, categorized by the subject matter of the rules involved;

(B) the number of complaints or questions reported under clause (A) that were resolved to the satisfaction of the agency and the small businesses involved;

(C) the total number of staff serving as coordinators under this section during the most recent state fiscal year;

(D) the agency's costs in complying with this section during the most recent state fiscal year; and

(E) the projected budget required by the agency to comply with this section during the current state fiscal year; and

(3) deliver the report to the legislative council in an electronic format under IC 5-14-6 and to the Indiana economic development corporation established by IC 5-28-3.

SECTION 3. IC 4-22-2-28.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 28.2. (a) This section applies to a violation described in subsection (c) that occurs after June 30, 2005. However, in the case of a violation of a rule adopted under IC 13-14-9 by the department of environmental management or any of the boards (as defined in IC 13-11-2-18), the procedures set forth in IC 13-30-4-3 and IC 13-30-7 apply instead of this section.

(b) As used in this section, "small business" has the meaning set forth in section 28.1(d) of this chapter.

(c) Except as provided in subsection (d), a small business that voluntarily provides notice to an agency of the small business's actual or potential violation of a rule adopted by the agency under

1 **this chapter is immune from civil or criminal liability resulting**
 2 **from an agency action relating to the violation if the small business**
 3 **does the following:**

4 **(1) Provides written notice of the violation to the agency not**
 5 **later than forty-five (45) days after the small business knew or**
 6 **should have known that the violation occurred.**

7 **(2) Corrects the violation within a time, which in no case may**
 8 **be less than ninety (90) days after the date of the notice**
 9 **described in subdivision (1), agreed to by the agency and the**
 10 **small business.**

11 **(3) Cooperates with any reasonable request by the agency in**
 12 **any investigation initiated in response to the notice.**

13 **(d) A small business is not immune from civil or criminal**
 14 **liability relating to a violation of which the small business provides**
 15 **notice under subsection (c) if any of the following apply:**

16 **(1) The violation resulted in serious harm or in imminent and**
 17 **substantial endangerment to the public health, safety, or**
 18 **welfare.**

19 **(2) The violation resulted in a substantial economic benefit**
 20 **that afforded the small business a clear advantage over the**
 21 **small business's competitors.**

22 **(3) The small business has a pattern of continuous or repeated**
 23 **violations of the rule at issue or any other rules of the agency.**

24 **(e) Information that a small business provides under this section,**
 25 **including actions and documents that identify or describe the small**
 26 **business, to an agency in providing notice of the small business's**
 27 **actual or potential violation of a rule adopted by the agency is**
 28 **confidential, unless a clear and immediate danger to the public**
 29 **health, safety, or welfare or to the environment exists. Information**
 30 **described in this subsection may not be made available for use by**
 31 **the agency for purposes other than the purposes of this section**
 32 **without the consent of the small business.**

33 **(f) Voluntary notice of an actual or a potential violation of a rule**
 34 **that is provided by a small business under subsection (c) is not**
 35 **admissible as evidence in a proceeding, other than an agency**
 36 **proceeding, to prove liability for the rule violation or the effects of**
 37 **the rule violation.**

38 **SECTION 4. IC 34-30-2-3.8 IS ADDED TO THE INDIANA**
 39 **CODE AS A NEW SECTION TO READ AS FOLLOWS**
 40 **[EFFECTIVE JULY 1, 2005]: Sec. 3.8. IC 4-22-2-28.2 (Concerning**
 41 **voluntary notice by a small business of an actual or a potential**
 42 **violation of an agency rule).".**

- 1 Renumber all SECTIONS consecutively.
 (Reference is to HB 1265 as printed February 15, 2005.)

and when so amended that said bill do pass .

Committee Vote: Yeas 6, Nays 0.

Senator Riegsecker, Chairperson